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WRITER'S DIRECT NUMBER

May 28, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204E
Washington, DC 20554

Re: Proposed Global Venture Between AT&T Corp. and British Telecommunications plc, IB Docket No. 98-212

Dear Ms. Salas:

This letter responds further to a series of misguided claims by carriers who will compete with the proposed global venture between AT&T Corp. ("AT&T") and British Telecommunications plc ("BT"). First, citing the current "dominant" status of BT, competitors have urged the Commission to impose onerous new regulatory constraints on the global venture parties' dealings with BT. Applicants have previously demonstrated that the Commission's existing regulations address any legitimate competitive concerns, and that the proposed additional conditions could only benefit competitors to the detriment of competition and consumers. *See, e.g.*, Applicants' February 17, 1999 Reply Comments ("*Applicants' Reply*") at 45-55. To avoid any possible confusion on the matter, however, Applicants confirm that they will not accept from BT, directly or indirectly, including through the global venture's UK subsidiary, Concert Communications Company, any special concession, in accordance with section 63.14 of the Commission's rules, as amended in *In the Matter of 1998 Biennial Regulatory Review*, IB Docket No. 98-148; *Reform of the International Settlements Policy and Associated Filing Requirements, Regulation of International Accounting Rates*, CC Docket No. 90-337A (Phase II); *Market Entry and Regulation of Foreign-affiliated Entities*, IB Docket No. 95-22 (adopted April 15, 1999).[1]

[1] By its terms, the Special Concessions rule prohibits any US carrier from accepting, "directly or indirectly," a special concession from any "foreign carrier" that has market power in a relevant market. By virtue of the rule's distinct prohibition on the acceptance of special concessions *indirectly*, the rule prohibits a US carrier from accepting a special concession from any "foreign carrier" that has market power in a relevant market, when

Second, competitors have claimed that AT&T and BT currently win most of the contracts to supply global corporate communications services that multi-national corporations ("MNCs") put out for bid. As Applicants have previously explained, the competitive reality is that AT&T and BT win only a small minority of such contracts. *See Applicants' Reply* at 18. AT&T and BT sales and business staff familiar with these vigorously competitive bidding processes remain confident that this is likely to remain the case for the foreseeable future.

Of course, these competitors' claims cannot be disproved with direct numerical evidence for the simple reason that neither Applicants nor their competitors know how many total contracts MNCs put out for bid in any given period. MNC customers determine which suppliers will be asked to bid on a particular contract, and information about the bidding process generally is closely guarded at the customer's request. Thus, there is simply no data available from which a meaningful calculation of any supplier's "win/loss" share of total bids could be made.[2]

The indirect evidence that AT&T and BT win only a small minority of total contracts awarded is, however, quite strong. The record is replete with unrebutted evidence, for example, that AT&T and BT today serve a small minority of total MNC accounts,[3] that pervasive multi-sourcing means that these AT&T and BT customers are often customers of competitors as well,[4] and that both the number and reported financial successes of competing suppliers continue to expand rapidly.[5] These documented facts

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such special concession is passed through that foreign carrier's nondominant foreign carrier affiliate. Thus, the rule would prohibit the applicants from accepting any special concession from BT, which the FCC classifies as having market power, either directly, or indirectly through the GV's UK affiliate or a third party

[2] A supplier's own internal "win/loss" rate calculated as bids won divided by only that supplier's documented opportunities to bid would, of course, be meaningless because no supplier is asked to bid on all contracts. In all events, AT&T and BT have determined, through discussions with the relevant business and sales personnel, that the data that would be necessary to calculate an internal "win/loss" rates are not readily available. Sales opportunities and activities are generally managed on a decentralized basis, and much of the data that would be necessary to calculate such a bid "success" rate -- including, critically, sales opportunities for which the supplier elected *not* to submit a bid – is tracked, if at all, only informally by individual sales personnel using their own varying criteria.

[3] *See, e.g., Applicants' Reply* at 16-17.

[4] *See, e.g., Applicants' Reply* at 10, 17.

[5] *See, e.g., Applicants' Reply* at 12-14; April 12, 1999 Letter from James E. Graf II and Lawrence J. Lafaro to Magalie Roman Salas at nn. 5-6 ("*Applicants' April 12 Letter*").

simply cannot be reconciled with any claim that AT&T and BT win most contracts as a matter of course.

Applicants attach yet additional indirect evidence. As part of its investigation of the proposed global venture, the European Commission ("EC") supplied a list of 197 corporations, which the EC represented as the most intensive users of global telecommunications services.[6] The EC asked AT&T to identify the primary global services suppliers for as many of these corporations as possible. MCI WorldCom topped the list as a primary supplier to nearly 28% of the 86 corporations for which AT&T was able to identify primary suppliers, followed by Global One, a primary supplier to 18% of these global-intensive corporations. AT&T and BT, in contrast, were primary suppliers to only 9.5% and 11.4% of these customers, respectively. *See* Table 1 (attached hereto).

To be sure, the EC list is not exhaustive, and an absence of data precludes any verification that the same primary supplier percentages would hold for other MNCs on or off the EC list. That level of uncertainty is inevitable: unprecedented growth, entry and expansion rates, technology convergence, and services evolution ensure that there will be little verifiable data relating to the dynamic global corporate communications services business and hence that *any* indirect evidence of the competitiveness of that business will be subject to criticism as "imperfect." Applicants have never argued otherwise. Indeed, Applicants have been quite candid with regard to the available third party market share studies, pointing out, for example, that the data limitations of these studies and the absence of precise industry conventions have likely produced errors, some of which are impossible to quantify.[7] Applicants fully expect the Commission to recognize that these studies and other profferred evidence are imperfect, but also to recognize that *all* of the evidence points in the same direction and counsels speedy approval of the Applications. *See Pennsylvania* v. *ICC*, 535 F.2d 91, 96 (D.C. Cir. 1976) ("A French proverb cautions that the best should not be the enemy of the good. . . . [T]he infeasible perfect [should not be allowed] to oust the feasible good").

Indeed, as the EC recently held in positing a "worst-case" combined AT&T/BT share of as much as 30-50 percent, the same outcome would be compelled even if there were *no* evidence that the global venture will begin with a small share of the global services business. As the Commission has consistently and properly held, where, as here, a market is characterized by sophisticated large business customers that employ competitive bidding processes, numerous strong competitors, and readily available inputs, even a carrier with relatively high share would have no ability to harm competition or consumers.[8]

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[6] The original EC list included 201 companies, but mergers narrowed the list to 197.

[7] *See Applicants' April 12 Letter* at 9-10 & n. 18; January 19, 1999 Letter from Mark Schneider and David Lawson to Magalie Roman Salas at 3-5.

[8] *See, e.g., Applicants' Reply* at 8-14.

One competitor, Cable & Wireless plc ("C&W") has also complained that the global venture may use its own capacity on the US-UK route, and that this could "strand" C&W UK-end half-circuits that are currently used to terminate AT&T traffic. First, as Applicants have previously explained, C&W's real complaint is with the authorization of ISR on the US-UK route, which encourages all carriers to terminate traffic at the lowest cost, whether through a traditional correspondent arrangement, self-correspondence, or a one-way termination arrangement, and heightens competitive pressure on the arrangements and rates offered by C&W. Second, the global venture would have no conceivable incentive to "strand" C&W's half-circuits in this manner because that would also strand the global venture's own matching half-circuits. In this regard, C&W's "raising rivals cost" theory is implausible on its face: the AT&T-C&W paired circuits represent less than one percent of today's transatlantic capacity and C&W already owns *more* US-end half-circuits than AT&T. C&W and the global venture would thus bear the same costs for unused matching half-circuits. Accordingly, C&W and the global venture will have the same incentive to offer attractive termination rates to obtain traffic, or if their rates are uncompetitive, to sell or lease the unused circuits. Carriers routinely buy, sell, and lease capacity to one another, to accommodate shifting traffic patterns, in a highly competitive cable capacity marketplace.[9] Indeed, a carrier's incentives in this context to divest capacity that is unlikely to be used are so clear that Applicants are willing to commit that they will divest, at prevailing market rates and terms (*e.g.*, recent competitive sales of capacity), any of AT&T's existing US-end half-circuits paired with a competitor's UK-end half-circuits that the global venture determines, in the exercise of its reasonable business judgment, are unlikely to be used to deliver significant volumes of traffic (because, for example, the competitor's termination rates are expected to remain uncompetitive).

Finally, as Applicants have previously explained, speculation that the global venture might in the future be able to exercise market power over global corporate communications services by using proprietary IP-based applications programming interfaces ("APIs") to "lock-in" MNC customers is entirely unfounded. *See Applicants' Reply* at 19-27. Applicants have publicly stated both to the press and in an affidavit filed with the Commission that the global venture plans: (i) to develop an open IP-based global network, (ii) to make its customer-facing API specifications available both to the global venture's own distributors and customers and to third parties, and (iii) wherever possible, to use existing and developing public domain, IP-based standards sanctioned by the Internet Engineering Task Force ("IETF") and other standards-setting bodies. *See also* Affidavit of Thomas B. London at 2 (appended to *Applicants' Reply*). As Applicants have stressed, it would be commercially irrational for the global venture, which must play

[9] The only circumstances in which AT&T would have an incentive to let circuits sit idle over the long term would be if they were no longer competitive on an incremental cost basis with newer cables. If that were the case, neither C&W nor AT&T (nor anyone else) would have any economic use for the half circuits in question. Rather, those half circuits would be "stranded" by changing technology.

"catch-up" with GTE, MCI, C&W and Sprint in the IP space, to do anything else. *See Applicants' Reply* at 24-26; London Affidavit at 2-3 ("developing proprietary network protocols, services, and APIs would mean great delay and expense, and the Global Venture cannot afford any such delay given the significant headstarts of competitors such as MCI WorldCom, Cable & Wireless, Global One, and GTE").

It is important to recognize in this context that APIs are merely *specifications* that will be published and available to all. APIs are not "applications;" rather, they tell applications developers the "*language*" that applications must be able to speak if they are to run properly on any network that supports those APIs. Published APIs give application developers everything they need to write applications that will run on the network that employs those APIs.[10]

It is also important to understand that IP-based APIs often are not developed by standards-setting bodies; rather, they emerge from a competitive process in which corporations, individuals, and universities, individually or in group, are all working to develop standards that they hope will be adopted as the "industry standard." That occurs when a proposed standard is submitted to a standards-setting body and approved by that body (often with modifications). In rapidly developing and highly competitive markets, a network owner may choose to deploy a new service or feature even before the industry standards-setting process has concluded.[11] Of course, that strategy entails significant risks for the network owner if the new standard does not ultimately prevail in the standards-setting process. The ability of competing network owners to choose to take such risks and expand customers' choices in this manner is, however, manifestly pro-competitive. That is why, given the dynamic, competitive nature of the API development process and in the provision of global services over the networks that will employ those APIs, any API regulation that applied only to one competitor, even if well-intentioned, would be an enormous handicap for that competitor and would create innumerable opportunities for mischief by its competitors -- to the clear detriment of competition and consumers.

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[10] In contrast, a standards developer frequently will not publish the source code which explains how the standards developer designed a standard and how information compatible with the published APIs will be used by the interface program to operate or instruct the network. But that is to be expected. Source code solutions are one area in which innovation occurs and should be rewarded. The fact that interface *source code* is not "open" does not change the fact that applications will be transferable from one network to another that employs the same or compatible open APIs.

[11] So long as the API specifications for the internally generated or third party standards employed in these circumstances are published, those APIs are no less "open" than standards endorsed by a standards-setting body.

Respectfully submitted,

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Table 1
The Primary Suppliers Identified by AT&T to 86 of the 197 Most Intensive Users of Global Telecommunications Services

Global Carrier	Percentage of Customers for Which the Carrier is a Primary Supplier
MCI WorldCom	27.6%
Global One (Sprint/DT/FT)	18.1%
BT	11.4%
AT&T	9.5%
Equant	9.5%
C&W	3.8%
EDS	1.9%
IBM	1.9%
KDD	1.9%
Hong Kong Telecom	1.0%
IDC	1.0%
Netherlands PTT	1.0%
Swisscom	1.0%
Telecom Finland	1.0%
Telstra	1.0%
Other Vendors (not specifically identified)	8.6%
Total	**100.0%**